

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR**

**ACTION REFERRAL**

TO <i>Singletan</i>	DATE <i>4-1-08</i>
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<b>DIRECTOR'S USE ONLY</b>	<b>ACTION REQUESTED</b>
1. LOG NUMBER <i>000501</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>CC: Waldrop Cleared 4/2/08, letter attached.</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>4-10-08</i>
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

<b>APPROVALS</b> (Only when prepared for director's signature)	<b>APPROVE</b>	<b>* DISAPPROVE</b> (Note reason for disapproval and return to preparer.)	<b>COMMENT</b>
1.			
2.			
3.			
4.			



APR 01 2008

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

**From:** Richard Kluender  
**To:** Brenda James; Margarete Keller  
**Date:** 4/1/2008 8:53 am  
**Subject:** Fwd: Paid Family Caregivers

Please see Sam's comment below regarding logging to Mr. Carter in legal.

Thanks

Richard

*Log: Singleton  
Appo Sign.  
cc: Waldrep*

>>> Sam waldrep 4/1/2008 8:38 AM >>>

Can you please get this logged in to Bruce Carter in legal?

>>> "Patricia L Harrison" <plh.cola@worldnet.att.net> 03/31/08 4:19 PM >>>

Sam, have you reviewed 736-01-DD, which requires family member to sign a statement that he/she is not "legally responsible for the health care decisions" of a waiver participant? I disagree with the logic of prohibiting a guardian who is not a parent or a spouse from being able to provide paid services, but this document arguably could be interpreted as even prohibiting a person named by the waiver participant as health care agent in a power of attorney from serving.

This could result in participants not signing a health care power of attorney, resulting in more costs later because there is no one with legal authority to direct care. This is particularly problematic for persons who have mental illness and MR who might have capacity to name a health care agent at some point time and very much need someone to help with decisions when they need hospitalization or consent to take medications. I don't believe that this prohibition would hold up if challenged as it puts a chilling effect on disabled persons who want to sign a power of attorney. This directive was just reviewed - or may be undergoing review now.

Since HHS is responsible for reviewing all policies affecting waiver participants, I hope you will address this with DDSN and see that this discriminatory language is removed. Thanks.

Trisha



*State of South Carolina*  
*Department of Health and Human Services*

*Joseph Sel*  
✓

Mark Sanford  
Governor

Erinna Forkner  
Director

April 24, 2008

Patricia L. Harrison, Esquire  
Attorney at Law  
611 Holly Street  
Columbia, South Carolina 29205

RE: Inquiry on DDSN directive 736-01-DD

Dear Ms. Harrison:

This is in response to your e-mail to Sann Waldrep regarding Directive 736-01-DD issued by the Department of Disabilities and Special Needs (DDSN). In your e-mail you expressed concern over the requirement that a family member has to sign a statement indicating they are not "legally responsible for the health care decisions" of the beneficiary. You further indicated concern that Directive 736-01-DD might be "interpreted as even prohibiting a person named by the waiver participant as health care agent in a power of attorney from serving."

On December 4, 2004, we issued a Medicaid Bulletin (copy attached) containing our Family Caregiver Policy. Our policy states:

The following family members **cannot** be reimbursed:

1. The spouse of a Medicaid consumer;
2. A parent of a minor Medicaid consumer;
3. A step parent of a minor Medicaid consumer;
4. A foster parent of a minor Medicaid consumer;
5. Any other legally responsible guardian of a Medicaid consumer.

Additionally, the Department has taken the position that because of the potential for abuse and manipulation, it is inappropriate for any one person to be both the provider of services to a waiver participant and the person who makes the decision regarding which provider will be

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used. For purposes of administration, the waiver recipient or his health care decision-maker is considered to be the employer of the personal care provider. We believe that the employer and employee should not be the same person because of the inherent conflict that arises from such circumstance. Under our position, simply being named as a health care agent in a power of attorney would not disqualify the person from serving as the provider. However, should the waiver recipient become incapacitated so that the power of attorney becomes operational, the health care agent could not continue on as the provider. We believe that this position is in the best interest of the participants and the Department.

In reviewing DDSN Directive 736-01-DD, we believe this was an effort by DDSN to implement both the Family Care Giver Policy and our position regarding the appropriate exercise of responsibility when one is a participant's health care decision-maker. We will be discussing the current version of the Directive with DDSN and making suggestions for clarification of the Directive to bring it in line with the Department's policies.

If you have any questions or I can be of any assistance, please contact me directly at (803) 898-2793 or by e-mail at [carterbd@scdhhs.gov](mailto:carterbd@scdhhs.gov).

Sincerely,



Bruce D. Carter  
Assistant General Counsel

cc: Sam Waldrep, SC DHHS  
Deirdra Singleton, SC DHHS

Attachment

Office of General Counsel  
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(803) 898-2795 Fax (803) 255-8210

South Carolina  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Post Office Box 8206  
Columbia, South Carolina 29202-8206  
[www.dhhs.state.sc.us](http://www.dhhs.state.sc.us)

December 8, 2004

# MEDICAID BULLETIN

CLTC

04-07

**TO:** Community Long Term Care Providers

**SUBJECT:** Family Caregiver Policy

In an effort to foster more consumer direction, the South Carolina Department of Health and Human Services has amended its family caregiver policy for home and community-based waivers and the Palmetto Senior Care Program. Pending State Plan Amendment approval, this change will also apply to State Plan children's personal care and nursing services. This amended family caregiver policy incorporates the federal guidelines for which family members may be paid by Medicaid as family caregivers.

Reimbursement for personal care, attendant care, adult day health care, nursing services, respite care, and companion services\* may be made to certain family members who meet South Carolina Medicaid provider qualifications.

The following family members cannot be reimbursed:

1. The spouse of a Medicaid consumer;
2. A parent of a minor Medicaid consumer;
3. A step parent of a minor Medicaid consumer;
4. A foster parent of a minor Medicaid consumer;
5. Any other legally responsible guardian of a Medicaid consumer.

In addition, family members who are primary caregivers will not be reimbursed for respite and/or companion services\*. All other qualified family members can be reimbursed for their provision of the services listed above. Should there be any question as to whether a paid caregiver falls in any of the five categories listed above, DHHS legal counsel will make a determination.

This policy change is effective for services delivered after November 1, 2004 for waiver and Palmetto Senior Care recipients. It will be effective for children's nursing and personal care services upon federal approval of the State Plan Amendment. You will be notified when that approval is received. Questions regarding this bulletin may be directed to your program manager at (803) 898-2590. Thank you for your continued participation in the South Carolina Medicaid program.

/s/

Robert M. Kerr  
Director

\*This policy excludes adult companion services that are offered in the Mental Retardation/Related Disabilities waiver.

**NOTE:** To receive Medicaid bulletins by email or to sign up for Electronic Funds Transfer of your Medicaid payment, please go to the following link for instructions:

<http://www.dhhs.state.sc.us/ResourceLibrary/E-Bulletins.htm>

Fraud & Abuse Hotline 1-888-364-3224